

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

GREAT BOWERY INC d/b/a
TRUNK ARCHIVE,
Plaintiff,
v.
CONSEQUENCE SOUND LLC,
CONSEQUENCE MEDIA
GROUP INC.; and DOES 1
through 10 inclusive
Defendant.

Case No. **9:23-cv-80488**

**STATEMENT OF UNDISPUTED
MATERIAL FACTS**

TO ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Plaintiff Great Bowery Inc. d/b/a Trunk Archive hereby submit the following statement of undisputed material facts, with references to supporting evidence:

	UNDISPUTED FACT	EVIDENCE
1.	Great Bowery Inc. d/b/a Trunk Archive (“Trunk Archive”) is a full-service photography licensing agency representing some of the most prominent photographers in the world	Declaration of Katrin Koszta (“Koszta Decl.”) ¶4 Exhibit 36, Complaint ¶9
2.	Trunk Archive represents photographer Annie Leibovitz (“Leibovitz”)	Koszta Decl. ¶3, Declaration of Jennifer Rockwood (“Rockwood Decl.”) ¶4, Declaration of Annie Leibovitz (“Leibovitz Decl.”) ¶38 Exhibit 36, Complaint ¶10

3.	On or about November 12, 2014, Trunk Archive and Leibovitz entered into an agreement (“Artist Agreement”) that granted Trunk Archive exclusive worldwide representation to license Leibovitz’ photographs.	Koszta Decl. ¶4 Leibovitz Decl. ¶39, Exhibit 29 ¶1
4.	Leibovitz is the creator and copyright holder to a photograph of actor Adam Driver as Kylo Ren (“Kylo Photograph”)	Leibovitz Decl. ¶4 Exhibit 1
5.	Leibovitz is the creator and copyright holder to a photograph of actors playing galactic travelers and smugglers (“Smuggler Photograph”)	Leibovitz Decl. ¶5 Exhibit 2
6.	Leibovitz is the creator and copyright holder to a photograph of actors Daisy Ridley, John Boyega, and Harrison Ford as Rey, Finn, and Han Solo aboard the Millenium Falcon with Chewbacca and B-8 (“Millennium Falcon Photograph”)	Leibovitz Decl. ¶6 Exhibit 3
7.	Leibovitz is the creator and copyright holder to a photograph of actress Lupita Nyong’o doing CGI tracking work to capture her character Maz Katana (“Nyong’o Photograph”)	Leibovitz Decl. ¶7 Exhibit 4
8.	Leibovitz is the creator and copyright holder to a photograph of actor Oscar Isaac as Poe Dameron (“Dameron Photograph”)	Leibovitz Decl. ¶8 Exhibit 5
9.	Leibovitz is the creator and copyright holder to two photographs of behind-the-scenes production of <i>Star Wars: The Force Awakens</i> (“Force Production Photographs”)	Leibovitz Decl. ¶9 Exhibit 6
10.	Leibovitz registered the Kylo Photograph, the Smuggler Photograph, the Millennium Falcon Photograph, the Nyong’o Photograph, the Dameron Photograph, and the Force Production Photographs (collectively the “Episode VII Photographs” with the U.S Copyright Office under VA 2-056-929 with an effective registration date of October 17, 2016.	Leibovitz Decl. ¶10-12 Exhibit 7
11.	Leibovitz is the creator and copyright holder to a photograph of actors Domhall Gleeson, Adam Driver, and Gwendoline Christie as	Leibovitz Decl. ¶13 Exhibit 8

	General Hux, Kylo Ren, and Captain Phasma (“Empire Photograph”)	
12.	Leibovitz is the creator and copyright holder to a photograph of actress Laura Dern as Vice Admiral Holdo (“Holdo Photograph”)	Leibovitz Decl. ¶14 Exhibit 9
13.	Leibovitz is the creator and copyright holder to a photograph of actress Daisy Ridley as Rey in the Millennium Falcon with Chewbacca (“Rey and Chewy Photograph”).	Leibovitz Decl. ¶15 Exhibit 10
14.	Leibovitz is the creator and copyright holder to a photograph of actor Adam Driver as Kylo Ren holding up a red lightsaber (“Red Lightsaber Photograph”)	Leibovitz Decl. ¶16 Exhibit 11
15.	Leibovitz is the creator and copyright holder to a photograph of actors Carrie Fisher, Oscar Isaac, John Boyega, and Kelly Marie Tran as Leia Organa, Poe Dameron, Finn, and Rose Tico standing with BB-8 (“BB-8 Photograph”)	Leibovitz Decl. ¶17 Exhibit 12
16.	Leibovitz is the creator and copyright holder to a photograph of actress Carrie Fisher and her daughter Billie Lourd as Leia Organa and Kaydel Ko Connix (“Connix Photograph”)	Leibovitz Decl. ¶18 Exhibit 13
17.	Leibovitz is the creator and copyright holder to a photograph of actors Mark Hamill and Carrie Fisher as Luke Skywalker and Leia Organa (“Skywalker Photograph”)	Leibovitz Decl. ¶19 Exhibit 14
18.	Leibovitz is the creator and copyright holder to two photograph of various actors dressed up as partygoers at the Canto Bright casino (“Canto Bright Photographs”)	Leibovitz Decl. ¶20 Exhibit 15
19.	Leibovitz is the creator and copyright holder to a photograph of actor Benecio Del Toro as DJ (“DJ Photograph”)	Leibovitz Decl. ¶21 Exhibit 16
20.	Leibovitz is the creator and copyright holder to a photograph of actress Daisy Ridley as Rey holding a blue lightsaber (“Blue Lightsaber Photograph”)	Leibovitz Decl. ¶22 Exhibit 17
21.	Leibovitz is the creator and copyright holder to two photographs of behind-the-scenes production of <i>Star Wars: The Last Jedi</i> (“Last Jedi Production Photographs”)	Leibovitz Decl. ¶23 Exhibit 18

22.	Leibovitz registered the Empire Photograph, the Holdo Photograph, the Rey and Chewbacca Photograph, the Red Lightsaber Photograph, the BB-8 Photograph, the Connix Photograph, the Skywalker Photograph, the Canto Bright Photographs, the DJ Photograph, the Blue Lightsaber Photograph, and the Last Jedi Production Photographs (collectively, the “Episode VIII Photographs) with the United States Copyright Office under registration certificate VA 2-111-252 with an effective registration date of July 10, 2017.	Leibovitz Decl. ¶24-26 Exhibit 19
23.	Leibovitz is the creator and copyright holder to a photograph of actors Oscar Isaac and Billy Dee Williams as Poe Dameron and Lando Calrissian with BB-8 and Chewbacca in the Millenium Falcon (“Lando Photograph”).	Leibovitz Decl. ¶27 Exhibit 20
24.	Leibovitz is the creator and copyright holder to a photograph of actor Mark Hamill as Luke Skywalker with R2-D2 (“R2-D2 Photograph”),	Leibovitz Decl. ¶28 Exhibit 21
25.	Leibovitz is the creator and copyright holder to a photograph of actors Domhnall Gleeson and Richard E. Grant as General Hux and Allegiant General Pryde (“Hux Photograph”).	Leibovitz Decl. ¶29 Exhibit 22
26.	Leibovitz is the creator and copyright holder to a photograph of actors John Boyega and Naomi Ackle as Finn and Jannah (“Finn Photograph”).	Leibovitz Decl. ¶30 Exhibit 23
27.	Leibovitz is the creator and copyright holder to a photograph of actors Adam Driver and Daisy Ridley as Kylo Ren and Rey engaged in a lightsaber battle (“Battle Photograph”)	Leibovitz Decl. ¶31 Exhibit 24
28.	Leibovitz is the creator and copyright holder to a photograph of actress Daisy Ridley as Rey (“Rey Photograph”).	Leibovitz Decl. ¶32 Exhibit 25
29.	Leibovitz is the creator and copyright holder to a photograph of actress Keri Russell as Zorii Bliss (“Bliss Photograph”).	Leibovitz Decl. ¶33 Exhibit 26
30.	Leibovitz is the creator and copyright holder	Leibovitz Decl. ¶34

	four behind-the-scenes photographs of the production of <i>Star Wars: The Rise of Skywalker</i> (“ROS Production Photographs”).	Exhibit 27
31.	Leibovitz registered Lando Photograph, the R2-D2 Photograph, the Hux Photograph, the Battle Photograph, the Rey Photograph, the Bliss Photograph, and the ROS Production Photographs (collectively the “Episode IX Photographs”) with the United States Copyright Office under registration certificate VA 2-192-380, with an effective registration date of January 16, 2020.	Leibovitz Decl. ¶35-37 Exhibit 28
32.	On May 4, 2015, Leibovitz’ Episode VII Photographs were first published by the publication <i>Vanity Fair</i> in an article titled “The Cast of <i>Star Wars: The Force Awakens</i> in <i>Vanity Fair</i> ” (“2015 Vanity Fair Article”)	Leibovitz Decl. ¶41 Exhibit 30
33.	After Leibovitz’ Episode VII Photographs were first published in <i>Vanity Fair</i> , Leibovitz then provided the Episode VII Photographs to Trunk Archive, as the exclusive licensor, in accordance with the Artist Agreement.	Leibovitz Decl. ¶44
34.	On May 24, 2017, Leibovitz’ Episode VIII Photographs were first published by the publication <i>Vanity Fair</i> in an article titled “See Annie Leibovitz’s Exclusive Cast Portraits of <i>Star Wars: The Last Jedi</i> for <i>Vanity Fair</i> ” (“2017 Vanity Fair Article”)	Leibovitz Decl. ¶45 Exhibit 31
35.	After Leibovitz’ Episode VIII Photographs were first published in <i>Vanity Fair</i> , Leibovitz then provided the Episode VIII Photographs to Trunk Archive, as the exclusive licensor, in accordance with the Artist Agreement.	Leibovitz Decl. ¶48
36	On May 22, 2019, Leibovitz’ Episode IX Photographs were first published by the publication <i>Vanity Fair</i> in an article titled “ <i>Star Wars: The Rise of Skywalker</i> Photos: Meet the Characters and Go On Set” (“2019 Vanity Fair Article”)	Leibovitz Decl. ¶49 Exhibit 32
37.	After Leibovitz’ Episode IX Photographs were first published in <i>Vanity Fair</i> , Leibovitz then provided the Episode IX Photographs to Trunk Archive, as the exclusive licensor, in	Leibovitz Decl. ¶52

	accordance with the Artist Agreement.	
38.	Defendant Consequence Sound LLC is a news and entertainment company that provides extensive coverage of movies, television, and other pop culture news items on its website and social media websites.	Exhibit 36, Complaint ¶27 Exhibit 37, Answer ¶27
39.	Defendant Consequence Media Group Inc. is a media engagement company that partners with major brands to create digital user engagement across its websites.	Exhibit 36, Complaint ¶28 Exhibit 37, Answer ¶28
40.	Defendant Consequence Sound and Defendant Consequence Media Group Inc own, manage, and operate the website www.consequence.net (“Defendant’s Website”)	Exhibit 36, Complaint ¶29 Exhibit 37, Answer ¶29
41.	Defendant Consequence Sound’s Website generates revenue for Defendants from advertising, live events, sponsorship, and performance marketing.	Exhibit 39, Defendant’s Response to Plaintiff’s First Set of Interrogatories (“ROGS”) Response No. 12
42.	On June 8, 2022, Trunk Archive’s copyright permissions manager discovered the Episode VII Photographs being used by Defendants on Defendants’ website www.consequence.net in an article titled “Details for Star Wars: The Force Awakens surface in Vanity Fair shoot – watch”, written by Michael Roffman (“Force Awakens Article”).	Rockwood Decl. ¶6 Exhibit 33 Exhibit 36 ¶30
43.	On June 8, 2022, Trunk Archive’s Copyright Permissions Manager discovered the Episode VIII Photographs being used by Defendants on Defendants’ website www.consequence.net in an article titled “Star Wars: The Last Jedi details and photos surface in Vanity Fair cover story”, written by Michael Roffman (“Last Jedi Article”).	Rockwood Decl. ¶8 Exhibit 34 Exhibit 36 Complaint ¶30
44.	On June 8, 2022, Trunk Archive’s Copyright Permissions Manager discovered the Episode IX Photographs being used by Defendants on Defendant’s website www.consequence.net in an article titled “Star Wars: The Rise of	Rockwood Decl. ¶10 Exhibit 35 Exhibit 36, Complaint ¶30

	Skywalker Vanity Fair details and photos in new Vanity Fair cover story”, written by Michael Roffman (“Rise of Skywalker Article”)	
45.	Trunk Archive did not grant a license to Defendant Consequence Sound, Consequence Media, Michael Roffman, or any other person or entity associated with Defendants .	Rockwood Decl. ¶30 Exhibit 36, Complaint ¶32
46.	Defendant Consequence Sound authorizes its editors to select, create, review, and publish content to the Website.	Exhibit 39, ROGS #5, #10, #14
47.	Defendant Consequence Sound authorizes its editors to review content before it is published to the Website.	Exhibit 39, ROGS #10, #15.
48.	Defendant Consequence Sound authorizes its editors to select content based on ‘newsworthiness’.	Exhibit 39, ROGS Response #14
49.	Michael Roffman was employed by Defendant Consequence Sound as its Editor-in-Chief from 2008 until 2021.	Exhibit 39, ROGS #4 Exhibit 38, Defendants’ Response to First Set of Requests for Admission (“RFA”) #5
50.	Defendant Consequence Sound downloaded the Star Wars Photographs from Vanity Fair’s website.	Exhibit 39, ROGS #7 Exhibit 38, RFA #13
51.	Defendant Consequence Sound did not get permission from Vanity Fair to use the Star Wars Photographs in the Infringing Posts.	Exhibit 38, RFA #18
52.	Defendant Consequence Sound licenses photographs from Getty Images, hires freelance photographers to create photographs, and uses photographs provided by publicists and talent representatives on its Website.	Exhibit 39, ROGS #6
53.	Defendant Consequence Sound did not purchase a license for any of the Star Wars Photographs.	Exhibit 39, ROGS #8.
54.	Michael Roffman wrote the articles “Details for Star Wars: The Force Awakens surface in Vanity Fair shoot – watch”, “Star Wars: The Last Jedi details and photos surface in Vanity	Exhibit 39, ROGS #3 Exhibit 33 Exhibit 34 Exhibit 35

	Fair cover story”, and “Star Wars: The Rise of Skywalker details and photos surface in new Vanity Fair cover story”” which were published on Defendant’s Website.	
55.	Michael Roffman selected and published the Star Wars Photographs on Defendant’s Website.	Exhibit 39, ROGS #9.
56.	Michael Roffman did not purchase a license for use of the Star Wars Photographs.	Exhibit 39, RFA #11
57.	Consequence Sound has the right and ability to control the Website.	Exhibit 38, ROGS #2
58.	Consequence Sound has the right to cause any content that appears on the Website to be removed.	Exhibit 38, ROGS #6
59.	Consequence Sound has authored content that appears on the Website.	Exhibit 38, ROGS #16
60.	Consequence Sound has the right to review any content that appears on the Website.	Exhibit 39, RFA #3
61	Consequence Sound receives advertising revenue from ads placed on the Website	Exhibit 39, RFA #14
62	Consequence Sound’s primary purpose of ownership of the Website is to gain financial return.	Exhibit 39, RFA #17.
63.	A Consequence Sound employee deleted the Star Wars Photographs from Consequence Sound’s server for the Website and removed the Infringing Articles.	Exhibit 38, ROGS, #8

DATED: May 10, 2024

Respectfully submitted,

s/ Taryn Rose Murray
Taryn Rose Murray, Esq.
Admitted Pro Hac Vice
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
Santa Ana, CA 92705-5418
(714) 617-8340
(714) 597-6559 facsimile
tmurray@higbee.law
Attorney for Plaintiff

/s/ Melissa A. Higbee
Melissa A. Higbee, Esq.
State Bar No. 62465
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
Santa Ana, CA 92705-5418
(714) 617-8340
(714) 597-6559 facsimile
tmurray@higbee.law
Attorney for Plaintiff